IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Bail Appl..No. 4041 of 2007()

CRIME NO.132/07 OF VELLIKULANGARA POLICE STATION

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PETITIONERS/ACCUSED NOS.1 TO 5:

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1. JAIMU @ JAMES, AGED 32 YEARS,
   S/O. PAILAN, GIRIJANPILLY HOUSE, INJAKUNDU,
   VARANTHARAPILLY VILLAGE, MUKUNDAPURAM TALUK,
   THRISSUR DISTRICT.

2. VARKEY @ VARGHESE, S/O. ESTHAPPAN,
   MOOTHEDATH HOUSE, INJAKUNDU,VELLIKULANGARA VILLAGE
   MUKUNDAPURAM, THRISSUR DISTRICT.

3. SUBASH, S/O. SUNDARAN,
   KUNNUMMEL HOUSE, NADIPPARA, MATTATHUR VILLAGE.

4. SATHEESAN, S/O. MANI,
   KARIMPARAMBIL HOUSE, INJAKUNDU, VELLIKULANGARA,
   MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

5. KANNAPPAN @ PRATHISH, S/O. SUNDARAN,
   THONDIPARAMBIL HOUSE, INJAKUNDU,VELLIKULANGARA
   VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4041 of 2007

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Dated this the 5th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 5. They face allegations under Section 326 r/w. 149 I.P.C. The alleged incident took place on 17.5.2007. The injured was taken to the doctor immediately. He had suffered a grievous hurt - fracture on the right ulna. To the doctor, he had alleged that he had suffered the injuries when he was assaulted. The F.I.R. was registered only on 1.6.2007. The complainant would explain that there was an attempt to settle the internecine dispute between the head load workers and that is why there is delay in lodging the complaint. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Only accused 1 to 4 have been named in the F.I.R. The 5th accused has subsequently been brought on the array of parties taking advantage of the statement in the belated F.I. statement that there were two other accused also in addition to accused 1 to 4. The real incident did not take place in the

manner alleged by the prosecution. On 18.5.07 an F.I.R. has been registered on the basis of the complaint by the third petitioner herein. In that he had raised allegations against the brother of the defacto complainant. Long later, the defacto complainant, who had suffered injuries when he fell into a cable pit, has raised false allegations against the petitioners in an attempt to coerce them to settle the disputes. It is in these circumstances prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioners.

3. The learned Prosecutor opposes the application. Allegation is serious. Injury suffered is also grievous. The delay in lodging the F.I. statement is of no crucial consequence as the allegation of assault had already been raised before the doctor promptly. At any rate, this is not a fit case where the equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioners, submits the Prosecutor.

4. Having considered all the relevant inputs, I find merit in the submissions of the learned Prosecutor. This, I am satisfied, is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having

jurisdiction and then seek regular bail in the ordinary course. I find no reason to invoke the equitable discretion under Section 438 Cr.P.C.

5. This application is hence dismissed. Needless to say, if the petitioners surrender before the Investigating Officer or the learned Magistrate having jurisdiction and apply for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

6. There is a submission that the matter has been settled between the parties by now. If that be so, that can also be brought to the notice of the learned Magistrate while considering the application, by authentic data.

(R. BASANT)
Judge

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